



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982.457	10/17/2001	Johnson Jiahui Qin	2705-703	7400

20575 7590 03/08/2007  
MARGER JOHNSON & MCCOLLOM, P.C.  
210 SW MORRISON STREET, SUITE 400  
PORTLAND, OR 97204

EXAMINER
----------

REILLY, SEAN M

ART UNIT	PAPER NUMBER
----------	--------------

2153

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/982,457	QIN, JOHNSON JIAHUI	
	Examiner	Art Unit	
	Sean Reilly	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Office action is in response to Applicant's amendment and request for reconsideration filed on December 15, 2006. Claims 1-34 are presented for further examination. All independent claims have been amended.

#### ***Applicant's Arguments***

With regard to claims 1-19 and 31-34, Applicant has added the limitation, *storing and tracking information associated with said automated software distribution method, wherein said automated software distribution method utilizes a scaleable software distribution framework and object model in which objects are linked together by unique object identifiers*, to each of the claims but argued the claims as though no such amendment was made. Applicant is requested to refer to newly added limitations as such, since arguing new limitations as though they were present in the rejected claim adds confusion to the record and hinders efficient prosecution.

#### ***Response to Arguments***

Applicant asserts that there is no motivation for the combination of Ginter and Srivastava found in the references and moreover the rejection is based on impermissible hindsight (see Applicant response December 15, 2006, pgs 15-16). Examiner respectfully disagrees.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

Art Unit: 2153

generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In the instant case, the motivation for the combination of Ginter and Srivastava is explicitly recited in the Srivastava reference. For example Srivastava disclosed that uniquely identifying and linking objects together allows the relationships between objects to be readily determined (Col 9, lines 65-67 and Col 10, lines 58-64). Contrary to any of Applicant's assertions, the motivation for the combination of Ginter and Srivastava is explicit in the references and thus proper.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant also asserts that Srivastava does not motivate or suggest the use of his system in an object model for an automated software development system and thus Applicant concludes that the two systems cannot be combined or when combined render the claimed invention (see Applicant response December 15, 2006, pg 17). Examiner respectfully disagrees with this analysis. Foremost, Examiner does not rely on Srivastava to teach the use of an object model where objects are linked together in an automated software distribution system, since these elements are already taught by Ginter. Examiner only relies on Srivastava to teach the use of

Art Unit: 2153

unique identifiers. Indeed Ginter's system most likely uses unique identifiers to identify his objects however Ginter did not explicitly recite such a feature. Nonetheless it readily apparent from Srivastava that the use of unique identifiers allows items to be easily identified and linked together (see Srivastava, see inter alia Col 9, lines 65-67 and 58-63). Examiner does not purpose bodily incorporating Srivastava's system within Ginter's system. Rather, Examiner proposes modifying Ginter's system to use unique identifiers for each object so that the objects can be easily identified and linked together. The combined system would thus function in the same capacity as Applicant's claimed invention. Furthermore, Srivastava's system is clearly directed to an object model, in Srivastava's system the objects are referred to as documents and there is an object model insomuch as relationships are formed between these documents in an application framework (see inter alia Col 11, line 53 – Col 12, line 2). Applicant' is free to further define the required attributes of an object or object model in the claims however, limitations that do not exist in the claims will no be read into the claims.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**1. Claims 20-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

With regard to claims 20-25, each claim recites multiple "means for" limitations that define a particular function. In view of Applicant's specification each "means for" limitation may be implemented in software and is software per se. Thus, each claim is non-statutory. A

Art Unit: 2153

software program that is not tangibly embodied on a computer readable medium is merely a manipulation of abstract ideas. Applicant may overcome this rejection by providing at least a single piece of computer hardware within the “means for” claim elements. Applicant is invited to review the latest “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility” (signed October 26<sup>th</sup>, 2005) which further clarifies computer-related nonstatutory subject matter on pages 50-57.

[http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101\\_20051026.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**2. Claims 1-34, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al. (U.S. Patent Number 5,892,900; hereinafter Ginter) and Srivastava et al. (U.S. Patent Number 6,845,499; hereinafter Srivastava).**

3. Regarding claims 1, 20, and 31, Ginter disclosed an automated software distribution method comprising:

- a. receiving a request to access a software distribution system (Col 315, lines 42-43);
- b. determining if the requester is a registered user (inherent for authenticating the user; Col 315, lines 43-50);

Art Unit: 2153

- c. determining if said registered user is authorized to perform (see inter alia “Rules and Control” Col 56, line 65 – Col 58, line 49 and more specifically Col 57, lines 1-5 wherein specific users are authorized to perform various tasks associated with an object and Col 58, lines 30-36 wherein user requests are denied or granted based on object “rules and control”) a software development scaleable distribution framework activity said determining comprising examining a transaction right associated with the said registered user (object modification restrictions for adding, modifying, or deleting software objects Col 285 line 65 - Col 286, line 48, including user restrictions, Col 286, lines 34-48; Note an object may be a software program since Ginter discloses the system is used distribute software products, Col 7, lines 48-54);
- d. performing an internal process associated with a software project under development, when said requester is authorized to perform said software development scaleable distribution framework activity (e.g. adding, modifying, or deleting software content under development Col 285 line 65 - Col 286, line 48; again note an object may be a software program since Ginter discloses the system is used distribute software products, Col 7, lines 48-54);
- e. determining if said registered user is authorized to perform (see inter alia “Rules and Control” Col 56, line 65 – Col 58, line 49 and more specifically Col 57, lines 1-5 wherein specific users are authorized to perform various tasks associated with an object and Col 58, lines 30-36 wherein user requests are denied or granted based on object “rules and control”) a commercial scaleable software distribution framework activity, said determining comprising examining a transaction right associated with

Art Unit: 2153

said registered user (obtaining content; i.e. downloading a software program Col 316, lines 6-7; for authentication see Col 315, lines 42-44 and 59-62 and Col 316, lines 22);

- f. performing a scaleable software distribution system commerce transaction, when said requester is authorized to perform said commercial scaleable distribution frame work activity (software download transaction; Col 316, lines 6-34);

Although Ginter disclosed the invention substantially as claimed, Ginter failed to specifically *recite* that objects are linked together by *unique* object identifiers. Nevertheless, it was well known in the art at the time of the invention to link objects together using unique identifiers, as evidenced by Srivastava. In an analogous art, Srivastava disclosed a software distribution system where objects (documents) are uniquely identified (Col 9, lines 65-67) and linked together (Col 10, lines 58-64). Srivastava further disclosed that uniquely identifying and linking objects together allows the relationships between objects to be readily determined (Col 10, lines 58-64). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Srivastava within Ginter's system, so the relationships between objects could be readily determined (Srivastava Col 10, lines 58-64).

- 4. Regarding claim 2, Ginter discloses notifying said requester that access is not granted (Col 58, line 36; Col 315, line 44).
- 5. Regarding claim 3, Ginter discloses the request is received from an internal user via an internal LAN (Col 168, lines 10-15).



Art Unit: 2153

6. Regarding claim 4, Ginter discloses the request is received from an external user via the internet (Col 315, lines 26-28).
7. Regarding claim 5, Ginter discloses said internal process comprising allowing the user to access an internal storage of software products (Col 315, lines 59-63).
8. Regarding claim 6, Ginter discloses an internal user is able to download software code, make changes and upload the modified code (Col 285, line 65 – Col 286 line 39; Col 320, lines 43-46).
9. Regarding claim 7, Ginter discloses the transaction is engaged in an electronic commerce environment (Col 1, lines 17-20).
10. Regarding claim 8, Ginter discloses a software transaction process is utilized (Col 316, lines 6-34).
11. Regarding claim 9, Ginter discloses an internal software publishing process comprising: receiving a request to engage in software image publishing activities (adding content to an object, publishing a new program would consist of adding content to an empty object, Col 285, line 66 – Col 286 line 6; an object may be a software program since Ginter discloses the system can distribute software products, Col 7, lines 48-54); engaging in a data population process (inherent for object storage) in accordance with a scaleable software distribution framework (figure 5b) and object model in which objects are linked together (e.g. within a container, Col 134, lines 10-67); checking information associated with a software project under development to ensure the requester has authorization to engage in software image publication activities (each object has predefined object modification restrictions, Col 286, lines 7-33; including user restrictions, Col 286, lines 34-48); receiving requisite supervisory authorization to proceed with

Art Unit: 2153

the publication (object modification restrictions Col 286, lines 7-48); and executing a software publication ("published object", Col 15, lines 52-57; objects added to the Ginter system are published based on the distribution restrictions specified).

12. Regarding claim 10, Ginter discloses the request is received from a software engineer (author) that has built a software image ready for commercial release (Col 7, lines 48-57).

13. Regarding claim 11, Ginter discloses the data population process includes a software distribution framework (SWDF) Information Model, SWDF Product Model and SWDF Packaging Model (Figure 5B).

14. Regarding claim 12, Ginter discloses the SWDF packing model is completed by pulling data from a database that includes features that map a software image and software product code (Col 59, lines 28-36).

15. Regarding claim 13, Ginter discloses SWDF authorization information is checked to make sure the requester has appropriate role risibility to engage in image publishing (Col 286, lines 7-33).

16. Regarding claim 14, Ginter discloses a commercial transaction process comprising: examining the commercial transaction rights of a requester (Col 316, lines 6-22); making a determination if the requester has entitlement to proceed with a commercial transaction (Col 316, lines 22-23); engaging in a commercial transaction entitlement process (Col 316, lines 6-34); investigating to determine if a Requester successfully completed a commercial transaction entitlement process (Col 316, lines 29-34); executing the Requested commercial transaction (Col 316, line 34).

Art Unit: 2153

17. Regarding claim 15, Ginter discloses the SWDF system stores information on the commercial transaction rights of external customers (Col 6, lines 43-67).

18. Regarding claim 16, Ginter discloses the SWDF system stores information the entitlements of external customers to engage in commercial transactions (Col 6, lines 43-67).

19. Regarding claim 17, Ginter discloses the SWDF Entitlement Information includes information on whether the customer has a service contract or paid money for the requested software product (Col 6, lines 43-67) and if the customer has entitlement (Col 316, line 22) to proceed the requested software product is downloaded (Col 316, line 34).

Regarding claim 18, Ginter discloses the commercial transaction process is an electronic commerce process (Col 1, lines 17-20).

20. Regarding claim 19, Examiner takes Official Notice that it was well known in the art at the time of invention that industry standard software products sold comprise software image binary executables, readme information, installation instructions, product manuals, guide and software requirements, and software release note, and software licensing key. It would have been obvious to one of ordinary skill in the art at the time of invention to include software image binary executables, readme information, installation instructions, product manuals, guide and software requirements, and software release note, and software licensing key within a software product distributed using Ginter's distribution system, in order to meet software product industry standards at the time of invention.

21. Regarding claims 21, Ginter discloses the information associated with an automated software distribution method is organized in accordance with software distribution framework

Art Unit: 2153

(SWDF) modules that manage the software distribution information and activities in accordance with SWDF models (Figure 5A and 5B; Col 59 lines 8-15; Col 59, lines 36-61).

22. Regarding claim 22, Ginter disclosed discloses the information associated with an automated software distribution method is organized in accordance with software distribution framework (SWDF) database, wherein SWDF database schema components are configured in accordance with four categories comprising regular database tables, composite link database tables, associating link database tables and runtime information query components (Figure 5A and 5B; Col 59 lines 8-15; Col 59, lines 36-61).

23. Regarding claim 23, Ginter discloses the information associated with an automated software distribution method is tracked and manipulated by means for indicating classes, attributes and operations (Figure 5A and 5B; Col 59 lines 8-15; Col 59, lines 36-61).

24. Regarding claim 24, Ginter discloses a means for manage different areas of framework information including user information, authorization information, software information, configuration information, commerce information, publication information, and distribution information (Figure 5A and 5B; Col 59 lines 8-15; Col 59, lines 36-61).

25. Regarding claim 25, Ginter discloses a link database table is a persistent storage for the relationship of two objects (Col 134, lines 8-67).

26. Regarding claim 26, Ginter discloses an automated software distribution apparatus comprising: a bus for communicating information associated with a n automated software distribution method (Figure 8, Component 653); an input mechanism for receiving requests for access to said information (Figure 8, Component 654); a processor for processing said information associated with an automated software distribution method (Figure 8, Component

Art Unit: 2153

654); and a memory for storing and tracking said information associated with an automated software distribution method (Figure 8, Component 652) with a scaleable software distribution framework (figure 5b) and object model in which objects are linked together (e.g. within a container, Col 134, lines 10-67).

Although Ginter disclosed the invention substantially as claimed, Ginter failed to specifically *recite* that objects are linked together by *unique* object identifiers. Nevertheless, it was well known in the art at the time of the invention to link objects together using unique identifiers, as evidenced by Srivastava. In an analogous art, Srivastava disclosed a software distribution system where objects (documents) are uniquely identified (Col 9, lines 65-67) and linked together (Col 10, lines 58-64). Srivastava further disclosed that uniquely identifying and linking objects together allows the relationships between objects to be readily determined (Col 10, lines 58-64). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Srivastava within Ginter's system, so the relationships between objects could be readily determined (Srivastava Col 10, lines 58-64).

27. Regarding claim 27, Ginter discloses said bus is communicatively coupled to a communication network (Figure 8).

28. Regarding claim 28, Ginter discloses an automated software distribution method is implemented via said communications network (Col 315, lines 42-43).

29. Regarding claim 29, Srivastava disclosed an XML-based software distribution framework is utilized to enable automatic distribution of software over the Internet and WWW while coordinating, correlating and collecting information that assists software distribution management and maintenance activities (Col 11 line 60 – Col 12, line 16).

Art Unit: 2153

30. Regarding claim 30, Ginter discloses software images are publish based on software rights associated with a business rule/responsibility model and software products are distributed to customers based on commerce model (Col 4, lines 14-68).

31. Regarding claims 31-34, the limitations of claims 31-34 are similarly drawn to the limitations of claims 1 and 4-6, respectively. Hence, claims 31-34 are rejected using similar rationale.

### *Conclusion*

32. The prior art made of record, in PTO-892 form, and not relied upon is considered pertinent to applicant's disclosure.

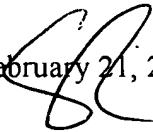
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean Reilly whose telephone number is 571-272-4228. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2153

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 21, 2007



**GLENTON B. BURGESS**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**